

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN RE: CAPITAL ONE CONSUMER  
DATA SECURITY BREACH  
LITIGATION

THIS DOCUMENT RELATES TO  
ALL ACTIONS

MDL No.: 19-md-2915

JUDGE ANTHONY J. TRENGA

**RESPONSE TO GITHUB'S OPPOSITION TO APPLICATION OF SABITA J. SONEJI  
TO SERVE ON PLAINTIFFS' STEERING COMMITTEE**

On November 25, 2019, Defendant Github filed an opposition to Sabita J. Soneji's leadership application. Dkt 201. Because that opposition contained numerous unsupported allegations, some of which attempt to challenge Ms. Soneji's judgment and fitness for leadership in this case, this brief response is necessary.

In its opposition, Github confuses its rhetoric with facts and evidence. It is true that only two cases in this MDL named Github as a defendant; Ms. Soneji filed the first. However, most of the complaints filed against Capital One also allege, citing, inter alia, the criminal complaint against the hacker, that personal and sensitive data was exposed and disclosed on GitHub.com. *See, e.g., Zosiak v. Capital One Financial Corp.*, U.S. District Court for the District of Columbia, Case No. 19-cv-2265 (Doc. 1 ¶ 13); *Tadrous v. Capital One Financial Corp.*, U.S. District Court for the District of Columbia, Case No. 19-cv-2292 (Doc. 1 ¶¶ 17-18); *Berger et al. v. Capital One Financial Corp.*, U.S. District Court for the District of Columbia, Case No. 19-cv-2298 (Doc. 1 ¶ 22); *Greenstein v. Capital One Financial Corp.*, U.S. District Court for the District of Columbia, Case No. 19-cv-2307 (Doc. 1 ¶ 13); *Lipskar v. Capital One Financial Corp.*, U.S. District Court for the District of Columbia, Case No.

19-cv-2328 (Doc. 1 ¶ 13); *Baird v. Capital One Financial Corp.*, U.S. District Court for the Eastern District of Virginia, Case No. 19-cv-979 (Doc. 1 ¶¶ 52-53). Many of the cases filed in this MDL allege that GitHub played a role in disclosure of the private data hacked by Paige Thompson.

Of course, no discovery has yet taken place. In support of their allegations about Github, most plaintiffs relied on the criminal complaint and public reporting about the Capital One data breach. There is not yet any other evidence. During the meet and confer between GitHub counsel and Ms. Soneji on August 21, 2019 and again in its opposition, Github alleged that “The file allegedly posted by Paige Thompson on GitHub on April 21, 2019, in fact contained no personally identifiable information (“PII”) of any kind involving any Capital One customer.” GitHub’s Opp at \*1. What Github failed to provide at the time and again in its opposition was any proof that this statement is true. During the meet and confer call, counsel for Github offered to send a declaration in support of his request that Plaintiffs Aballo and Zielicke dismiss Github as a defendant. Ms. Soneji told counsel for Github that she would review any such declaration; however, no declaration ever came.

Github ignores these facts in its opposition and instead claims it has “serious concerns” about Ms. Soneji’s ability to investigate this data breach case and her ability to work cooperatively with other counsel, solely because Ms. Soneji refused to dismiss Github from her case based on Github’s word. Github’s repeated mantra that it played no role in exposing and disclosing private data hacked from Capital One is not a legal substitute for actual evidence that is true. Its promises will not hold up in this Court. Absent any evidence that the allegations filed in her complaint against Capital One and Github or her leadership application are demonstrably false, it is inappropriate to dismiss the factual allegations contained therein, to question the integrity of Ms. Soneji and her

demonstrated ability to work productively with both co-counsel and opposing counsel,<sup>1</sup> or to oppose her well-supported leadership application.

Dated: November 26, 2019

Respectfully submitted,

/s/ Sabita J. Soneji  
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<sup>1</sup> Indeed, Ms. Soneji has the support of many other esteemed counsel with whom she has worked closely and well, including Leonard Bennett of Consumer Litigation Associates, Norm Siegel of Stueve Siegel Hanson LLP, and John Yanchunis of Morgan & Morgan.